

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **201117016**

Release Date: 4/29/2011

Index Number: 1362.00-00, 1362.04-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-134877-10

Date:

January 07, 2011

### Legend

X =

State =

Trust1 =

Trust2 =

Trust3 =

Trust4 =

A =

B =

Date1 =

Date2 =

Date3 =

Date4 =

Dear \_\_\_\_\_ :

This responds to a letter dated August 16, 2010, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

The information submitted states that X was incorporated under the laws of State on Date1. X elected to be an S corporation effective Date2. A was the sole shareholder of X during that time and until his death on Date3. Pursuant to the terms of A's Will and trust governing instruments, the X stock was to be distributed to Trust1 and Trust2. A's Will and trust governing instruments further provided that the assets of Trust2 were to be divided and distributed to Trust3 and Trust4 upon the death of A's spouse, B. However, on Date4, the X stock that should have been distributed to Trust1 and Trust2 pursuant to the terms of A's Will and trust governing instruments, instead had been mistakenly distributed among Trust1, Trust3 and Trust4, even though B was alive on Date4.

X represents that, even though Trust2 had been mistakenly divided into Trust3 and Trust4 on Date4, all items of income and loss of X allocable to Trust3 and Trust4 have been treated as if B were the sole income beneficiary of Trust3 and Trust4. In addition, X represents that all items of income and loss of X allocable to Trust1 have been treated as if B were the sole income beneficiary of Trust1. X also represents that Trust2 satisfies the requirements to be treated as a Qualified Subchapter S Trust ("QSST") under § 1361(d)(3) since Date4 except that Trust2 did not make a timely QSST election under § 1361(d)(2). X further represents that Trust1, Trust3 and Trust4 satisfy the requirements of an Electing Small Business Trust (ESBT) under § 1361(e) since Date4 except that Trust1, Trust3 and Trust4 did not make timely ESBT elections under § 1361(e)(3).

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation since Date4. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by a corporation (A) was not effective for the taxable year for which made (determined without regard to

§ 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election on Date4 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date4 and thereafter, provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d) for reasons not addressed in this letter. This ruling is contingent upon the co-trustees of Trust1, Trust3 and Trust4 filing ESBT elections for Trust1, Trust3 and Trust4, with an effective date of Date4, and upon the beneficiary of Trust2 filing a QSST election for Trust2, with an effective date of Date4. The elections must be filed with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to each election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust1, Trust3, and Trust4 qualify as ESBTs, or whether Trust2 qualifies as a QSST.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Charlotte Chyr  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes